

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WHITNEY BILYEU, individually and as Chair
of the LIBERTARIAN PARTY OF TEXAS, et
al.,

Plaintiffs,

V.

JOHN B. SCOTT, in his official capacity as the
Secretary of State of the State of Texas, et al.,

Defendants.

Civil Action No. 1:21-cv-01089-RP

**JOINT ADVISORY REPORT AND
NOTICE OF WITHDRAWAL OF MOTION TO COMPEL**

Pursuant to this Court’s Order [Dkt. # 23], Plaintiffs Whitney Bilyeu, individually and as Chair of the Libertarian Party Of Texas, the Libertarian Party Of Texas (“LPTexas”), Mark Ash, Stephanie Berlin, Joe Burnes, Arthur DiBianca, Kevin Hale, Desarae Lindsey, Arthur Thomas IV, and Mark Tippetts (collectively, the “Libertarians”) and Defendants Jose A. Esparza, in his official capacity as the Deputy Secretary of State of the State of Texas., and John B. Scott, in his official capacity as the Secretary of State of the State of Texas, jointly file their Joint Advisory Report.

As a result of the good faith “meet and confer” discussions between counsel for the parties following the receipt of Defendants’ production of responsive documents, the Libertarians respectfully withdraw their pending Motion to Compel, as explained below, and request that the upcoming February 14, 2022 hearing be cancelled.

PROCEDURAL HISTORY

The Libertarians propounded their First Set of Requests for Production (“Requests”) upon Defendants on January 21, 2022. The Requests sought the production of documents from eleven categories of candidate and/or party financial filings that are required by the Texas Election Code.

Each of the eleven requests stated that itemized reports summarizing the contents of the requested documents, when available, were acceptable in lieu of copies of the actual filings.

On January 28, 2022, Defendants served their Objections and Responses to Plaintiffs' First Set of Requests for Production ("Response"), which includes ten "General Objections" as well as objections to each of the eleven requests based on undue burden and disproportionality.

On February 4, 2022, counsel for the parties conferred via Zoom regarding Defendants' Response. Plaintiffs' counsel agreed to accept itemized summary reports from January 1, 2018, through present identifying the amounts, dates, candidate names, payor/payee information, and intended use and/or purpose of funds responsive to each of its eleven requests for production. Plaintiffs' counsel requested Defendants withdraw the ten "General Objections" and each of the unduly burdensome and disproportionality objections. On February 7, 2022, Defendants' counsel advised they would not withdraw any objection.

On February 8, 2022, out of an abundance of caution, the Libertarians filed their Expedited Motion To Overrule Defendants' Discovery Objections And Compel Production Of Documents [Dkt. # 22]. Since that time, Defendants have agreed to withdraw their General Objections.

On February 11, 2022, Defendants responded to the Motion to Compel. *See* Dkt. #24. Defendants also timely served their Amended Objections And Responses To Plaintiffs' First Set Of Requests For Production (the "Amended Response"), which revised their substantive responses and asserted just one objection on which they now stand—the undue burdensomeness of meeting the challenge of producing information responsive to the Libertarians' requests. But along with the written response, Defendants also concurrently produced twelve Excel files, each of which contains a compilation of data maintained by the Texas Secretary of State's Office responsive to the various Requests for Production.

Following that production, counsel for the parties had a lengthy joint telephone call to review the information produced and to confer regarding the substantive Amended Responses provided by Defendants. That call satisfactorily resolved many of the concerns expressed in the Motion to Compel, and it resulted in a very narrow area of follow up inquiries. Furthermore, counsel for Defendants has asserted that two additional spreadsheets will be produced containing information relative to 2018 and 2020 election estimates. Counsel has also represented that information responsive to other categories of information discussed during that call that have been requested would also be seasonably produced, to the extent that such information is available.

NOTICE OF WITHDRAWAL OF MOTION TO COMPEL

Accordingly, in light of their receipt of Defendants' Amended Response and related production set, along with Defendants' good faith stipulation to produce additional responsive information as may be available, the Libertarians hereby withdraw their Motion to Compel [Dkt. # 22]. Accordingly, the Libertarians request that this Court remove from its calendar the hearing on its Motion to Compel before Magistrate Judge Dustin M. Howell, currently set for February 14, 2022, at 2:00 p.m. [Dkt. # 23], without prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 11, 2022, this document was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/ Adam J. Russ

Adam J. Russ